

Message Text

LIMITED OFFICIAL USE

PAGE 01 GENEVA 05927 081014Z

13

ACTION EB-11

INFO OCT-01 IO-14 ISO-00 OMB-01 TAR-02 SPC-03 AGR-20

AID-20 CIAE-00 COME-00 INR-10 LAB-06 NSAE-00 OIC-04

RSC-01 SIL-01 STR-08 TRSE-00 CIEP-02 CEA-02 DRC-01

L-03 AF-10 ARA-16 EA-11 EUR-25 NEA-10 /182 W

----- 065238

R 080930Z NOV 73

FM USMISSION GENEVA

TO SECSTATE WASHDC 2455

LIMITED OFFICIAL USE GENEVA 5927

E.O.11652 NA

TAGS ETRN UNCTAD

SUBJ CODE OF CONDUCT FOR LINER CONFERENCE PRACTICES: IMPLEMENTATION

1. SUMMARY: INFORMAL DISCUSSIONS WITH LATAMS ON POSSIBLE COMPROMISE FOR IMPLEMENTATION INVOLVING MANDATORY USE OF INTERNATIONAL MACHINERY AND NON-BINDING DECISIONS, AND RESORT TO NATIONAL LAW, HAVE BEEN POSITIVE. UNLESS INSTRUCTED OTHERWISE, WE WOULD INTEND TO CONTINUE SOUNDINGS WITH SOME OTHER GROUP 77 MEMBERS PRESENT FOR PREPARATORY MEETINGS, WITHOUT COMMITMENT ON SUBSTANCE OR TIMING OF A POSSIBLE INTRODUCTION AT CONFERENCE. END SUMMARY.

2. IN RECENT MEETINGS WITH ARGENTINE AND MEXICAN REPRESENTATIVES ON COMMITTEE III OF JUNE PREPARATORY CONFERENCE, PAREJA AND NAJARO, FRANK EXCHANGE OF VIEWS ON PROBLEMS FACING GROUP ON IMPLEMENTATION SUBJECTS LED TO CONCLUSION WE SUSPECTED AT JUNE MEETINGS, NAMELY, THAT LATAM AND U.S. POSITIONS ABOUT ROLE OF NATIONAL LAW AND PLACE FOR INTERNATIONAL MACHINERY ARE CLOSER TO EACH OTHER THAN TO POSITIONS OF ANY OTHER GROUPS. DISCUSSIONS INCLUDED OUTLINE OF POSSIBLE COMPROMISE PROPOSAL INCLUDING 1)MANDATORY INTERNATIONAL MACHINERY WITH NON-BINDING RESULT; 2) RESORT TO NATIONAL LAW; AND 3) REVIEW CONFERENCE, WITH LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 GENEVA 05927 081014Z

REPORTING REQUIREMENT AND FACILITATED AMENDMENT PROCEDURES,

WITH EXPLANATION THAT IDEAS WERE IN FORMULATIVE STAGE ONLY AND U.S. POSITION REMAINED AS AT JUNE CONFERENCE. LATAMS WENT INTO DETAIL ON MEANING OF GROUP 77 CODE ARTICLES 66-67-68, INCLUDING ADMISSION THAT MANDATORY ARBITRATION CALLED FOR BY THESE ARTICLES WAS PRETTY MUCH A SHAM. IT WAS NOTED THAT WHEREEVER NATIONAL LAW COULD GOVERN A DISPUTE (INCLUDING NATIONAL LAW PASSED SUBSEQUENT TO A STATE'S BECOMING PARTY TO THE CODE), MANDATORY ARBITRATION PROVISION WOULD NOT APPLY, UNLESS STATES WHOSE LAW GOVERNED "VOLUNTARILY RELINQUISHED" THEIR JURISDICTION. (MANNER IN WHICH A STATE WOULD RELINQUISH ITS JURISDICTION WOULD NEED STUDY AT THE DIPLOMATIC CONFERENCE.) IT WAS POINTED OUT THAT U.S. SHOULD NOT FIND ITSELF HAVING TO OPPOSE THE GROUP 77 ARTICLES, SINCE MANDATORY ARBITRATION SYSTEM WOULD ONLY APPLY WHERE U.S. LAW COULD NOT APPLY. SYSTEM COULD NOT COMPEL U.S. CITIZENS TO RELINQUISH THEIR DAY IN COURT, BECAUSE IF U.S. COURTS COULD TAKE JURISDICTION SYSTEM WOULD NOT APPLY. THIS WAS CLEARLY A LATAM INTERPRETATION, IT WAS EMPHASIZED, WITH AFRICANS AND ASIANS PRESSING FOR A PURE SYSTEM OF MANDATORY INTERNATIONAL ARBITRATION.

3. LATAM RESPONSE TO COMPROMISE PACKAGE WAS THAT IT CONTAINED MANY "FERTILE IDEAS THAT SHOULD BE CULTIVATED," AND DESIRE TO REMAIN IN CLOSE CONTACT DURING PRE-CONFERENCE MEETINGS AND AT BEGINNING OF CONFERENCE. U.S. RESPONSE TO LATAM EXPLANATION OF ARTICLES 66-67-68 WAS THAT APPROACH MIGHT FIT, AND APPEARED NOT INCOMPATIBLE, WITH POSSIBLE COMPROMISE PROPOSAL, BUT THAT INORDINATE AMOUNT OF WORK WOULD BE REQUIRED AT CONFERENCE.

4. CONVERSATIONS THEN SWITCHED TO PROCEDURE, WITH FUNDAMENTAL AGREEMENT THAT SMALL CROSS-GROUP GATHERING OF LEGAL EXPERTS MIGHT DEVISE IMPLEMENTATION PACKAGE. POSSIBLE COMPOSITION WOULD BE ARGENTINE PLUS SMALL LATAM, U.S., SCAN OR OTHER FLEXIBLE EUROPEAN, FRENCH AND ENGLISH SPEAKING AFRICAN, ASIAN, AND ONE GROUP D. PROGRAMME WOULD BE TO LINE OUT PRINCIPLES IN A COMPLETE PACKAGE, GET SOME SORT OF COMMITTEE III ENDORSEMENT, THEN MOVE TO SPECIFICS OF DRAFTING. WHETHER EXCOMMOF CONFERENCE SHOULD ESTABLISH CROSS-GROUP (AS SRIVASTAVA SUGGESTED), OR COMMITTEE III ITSELF, WOULD DEPEND ON FURTHER SOUNDINGS IN THE GROUPS, AS WELL AS QUESTION WHETHER CROSS-GROUP SHOULD BEGIN IN FIRST OR SECOND WEEK OR AWAIT DEVELOPMENT OF IMPASSE AT ABOUT THIRD WEEK.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 GENEVA 05927 081014Z

QUESTION WAS ALSO RAISED WHETHER THERE WOULD BE PROBLEM DEVELOPING WORK IN COMMITTEE III IF COMMITTEE II HIT PREDICTABLE BOTTLENECKS AND DELEGATIONS WISHED TRADE-OFFS IN COMMITTEE III FOR CONCESSIONS IN COMMITTEE II. HOWEVER, DISCUSSION LED TO VIEW THAT COMMITTEE III PROBLEMS APPEAR UNIQUE FOR CERTAIN COUNTRIES, INVOLVING CONSTITUTIONAL OR OTHER FUNDAMENTAL LEGAL POLICIES NOT SUSCEPTIBLE TO TRADITIONAL TRADE-OFFS IN INTERNATIONAL NEGOTIATION. PAREJA POINTED OUT

COMMITTEE III COMPOSED OF LEGAL EXPERTS WHO HAD TO DEVISE WORKABLE IMPLEMENTATION MECHANISM; COMMITTEE III CONTAINED THE SHIPPING POLICY EXPERTS AND THE POLICY QUESTIONS, AND THEREFORE COMMITTEE II COMPROMISES SHOULD BE CONFINED TO COMMITTEE II SUBJECTS, NOT SPILLOVER INTO COMMITTEE III WORK.

5. BRIEF DISCUSSION WITH BLOM, SWEDEN, INDICATES CONTINUING SYMPATHY FOR COMPROMISE PROPOSAL, AS SHE INDICATED WHEN FIRST SURFACED AT PARIS OECD MEETING, BUT OPPOSITION TO SOME SORT OF MIXED SYSTEM INVOLVING MANDATORY ARBITRATION BINDING RESULT WITH SUPERVENING NATIONAL LAW WHERE APPLICABLE, WHICH WOULD LEAD TO "CONSTANT SHIPPING LINE INVOLVEMENT IN LITIGATION IN VARIOUS FORUMS ALL OVER THE WORLD."

6. OUR TENTATIVE THINKING ON TIMING FOR PROCEEDINGS TO WORK OUT COMPROMISE ON IMPLEMENTATION (IF DONE AT ALL), WOULD BE TO WAIT UNTIL ABOUT THIRD WEEK AND DEVELOPMENT OF IMPASSE. THIS BASED ON VIEW THAT ALL COMMITTEE III WORK CANNOT BE ACCOMPLISHED IN FIVE WEEK PERIOD UNDER ANY CIRCUMSTANCE. A "COMPROMISE" PROPOSAL INTRODUCED PREMATURELY WILL NOT BE A COMPROMISE AT ALL, SINCE THERE WOULD APPEAR TO BE NOTHING TO COMPROMISE; IT WOULD BE SEEN SIMPLY AS A SEPARATE POSITION OF SUPPORTING DELEGATIONS. ON OTHER HAND WE SHOULD HAVE FLEXIBILITY TO BEGIN ON CROSS-GROUP AT EARLIER STAGE IF 77 PRESSES, SO AS NOT TO APPEAR TO BE STALLING FOR A SECOND (RESUMED) SESSION OF DIP. CONF. AT LATER DATE.

7. UNLESS INSTRUCTED OTHERWISE, WE WOULD INTEND TO CONTINUE SOUNDINGS WITH OTHER GROUP 77 MEMBERS WHO INDICATE INTEREST IN DISCUSSION IMPLEMENTATION PROBLEMS, AND FOLLOW UP WITH THOSE WITH WHOM CONTACT HAS BEEN MADE OVER PAST SEVERAL MONTHS ON THIS SUBJECT. BASSIN

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: INTERNATIONAL LAW, MARITIME LAW, MARITIME MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 NOV 1973
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1973GENEVA05927
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: n/a
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1973/newtext/t19731147/aaaabiol.tel
Line Count: 146
Locator: TEXT ON-LINE
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 09 OCT 2001
Review Event:
Review Exemptions: n/a
Review History: RELEASED <09-Oct-2001 by eisnerah>; APPROVED <05-Dec-2001 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CODE OF CONDUCT FOR LINER CONFERENCE PRACTICES: IMPLEMENTATION
TAGS: ETRN, UNCTAD
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005